

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

(26)  
12/27/01  
WKA

ALLEN MORSLEY,  
petitioner

ORIGINAL

CASE # 1:01-cv-1003

VS.

DONALD ROMINE,  
respondent

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FILED  
HARRISBURG, PA  
DEC 26 2001

MOTION FOR  
APPOINTMENT OF COUNSEL

MARY E. D'ANDREA, CLERK  
Per SJD Deputy Clerk

NOW COMES , the Petitioner, ALLEN MORSLEY, proceeding herein pro se, Hereby Praying That this Hon. Court Appoint Counsel to represent the petitioner Allen Morsley in All Further proceedings in this Matter , Including Stages of further discovery and evidentiary Hearing(s). This motion is made pursuant to , and in accordance with TITLE 18 U.S.C.A SECTION 3006A(a)(2)(3)(5)(g), And TITLE 28 U.S.C.A, SECTION 1915(a)(1)(e)(1), The Due Process Clause of the Constitution, and in the "Interest Of Justice".

The petitioner Avers the Following :

1. That petitioner Is A Layman Of Law.
2. That petitioner Is Without Means To Retain Counsel(Poor).
3. That petitioners "Life" will Be the Cost Of Any Mistake in His Argument.
4. That Counsel for the respondent Has Found Reason To Call upon another United States Attorneys Office To Argue with United States Attorney Who Is Counsel For the Respondent.
5. That Petitioner is arguing A Supreme Court Case that Has many Circuits Undecided on its Application.(APPRENDI). As the Issues Are Complex.
6. Because petitioner Has come to the Conclusion that TITLE 21 U.S.C Sec. 841(a) 1. Is "Unconstitutional".

SEE UNITED STATES VS. JONES, 194 F.3d 1178 (10th Cir. 1999), Vacated, \_\_\_\_\_ U.S. \_\_\_\_\_, No. 99-8176, 2000 WL 217939 (June 29. 2000) ("Jones II"), The Tenth Circuit reaffirmed its prior holding that Subsection 841(b) Set Forth sentencing Factors and that the Statute was Nonetheless **Constitutional**. Three Days After its decision in APPRENDI. The Supreme Court Vacated The Tenth Circuits decision in JONES II And Remanded the Case For Further Consideration In Light Of Apprendi . The Supreme Courts remand in Jones II For Further Consideration in Light of Apprendi reveals that the Construction of Subsection 841(b) As Setting forth sentencing Factors is Correct. Importantly The Supreme Court did-not Vacate the decision and remand in Light of Castillo VS. UNITED STATES, \_\_\_\_\_ U.S. \_\_\_\_\_, 120 Sct. 2090, 2097(2000), Its Recent Statutory Construction Case On the Issue. In Other Words, By remanding for re-consideration in Light of Apprendi, "Not" Castillo, The Supreme Court Has Indicated that the Tenth Circuits Statutory Construction In JONES II Was **Correct** , But that its **Constitutional Determination Was "Flawed"**.

7. So either Apprendi Announced New Rule Of Statutory Construction / Or New Rule OF Constitutional Law ! Petitioner Believes that He Can Meet either One with the Help Of Co-Counsel. See McKAKLE VS. WIGGINS, cite as 104 Sct. 944 at page 947(Justice O'CONNOR delivered the Opinion[1984]). And Because of the Complexity of the Issues Raised In petition For Habeas Corpus' "exceptional Circumstances" exist that Would Warrant Appointment Of Co-Counsel In the Interest Of Justice.' See Purnell Vs. Lopez, 903 F. Supp. 863, at page 864 (E.D. Pa. 1995); Tabron Vs. Grace, 6 F.3d 147 (3rd. Cir. 1993); Sierra Vs. LeHigh County Pennsylvania, 617 F. Supp. 427 (D. C. Pa. 1985);

8. In Tabron Vs. Grace, 6 F 3d. 147 AT Page 156 (3rd Cir. 1993) The Court of Appeals Vacted and remanded Judge Sylvia Rambo's order which had Granted Summary judgment to Prison Officials after the Magistrate had issued an Order to deny an indigent prisoners motion for appointment of Counsel; The Court Of Appeals Declared:

" If it Appears that an indigent plaintiff with a Claim of " arguable merit is incapable of presenting his or her Case, serious consideration should be given to appointing counsel, ... ... and if such a plaintiffs Claim is truly Substantial, Counsel should ordinarily be Appointed. ..."

With consideration also being given to other Particular Factors, Including:

- a) The "difficulty of the particular Legal issues" And
- b) "if the legal issues are complex" [ the Court went on to say, " where the law is Not clear , it will often best serve the ends of Justice to have both sides of a difficult legal issue presented by those trained in Legal analysis"].

9. Congress has Modified Section 841 On Numerous Occasions . And it has Never Attempted to alter the unanimous View of the Federal Courts, that Subsection 841(b) Sets forth Only Sentencing Factors. Congress has never given "Any" Indication that the Courts were interpreting the Statute Incorrectly . " IF" Congress had intended the Statute to Be interpreted Differently ? Clearly It Would Have Spoken within the Past Fifteen Years.

" How do we Know that Congress intended Trial Judges to determine" by a preponderance of the evidence, pursuant to Subsection 841(b), The Quantity And Type of drug involved ?

The Federal Courts of Appeals have been Telling us so repeatedly since 1987. See UNITED STATES VS. Gibbs, 813 F.2d 596 (3rd. Cir.), cert denied, 484 U.S.82 (1987); UNITED STATES VS. PARKER, 30 F3d. 542, 554 (4th. Cir.) cert denied, 513 U.S. 1029(1994); UNITED STATES VS. WOOD, 834 F.2d 1382 (8th. Cir 1987);

UNITED STATES VS. MORGAN, 835 F.2d 79, 81 (5th. Cir 1987); UNITED STATES VS. RAMIREZ-RAMIREZ, 875 F.2d 772, 774 (9th. Cir.1989); UNITED STATES VS. LEVY, 904 F.2d 1026, 1033-34(6th Cir. 1990); UNITED STATES VS. WHITLEY, 905 F.2d 16165( 7th. Cir 1990); UNITED STATES VS. CAMPUZANO, 905 F.2d 667, 679 (2nd. Cir cert denied, 489 U.S. 947(1990); UNITED STATES VS. SILVERS, 84 F.3d 1317, 1320-21(10th. Cir.1996), cert denied, 519 U.S. 1079 (1997); UNITED STATES VS. WILLIAMS, 876 F.2d 1521, 1524-25 (11th. Cir1989); UNITED STATES VS. LAM KWON-Wah, 966 F.2d 682, 685-86 (D. C. Cir.), cert denied, 506 U.S. 901 (1992); UNITED STATES VS. WILLIAMS, 194 F.3d 100, 106-07 (D.C. Cir.1999); UNITED STATES VS. THOMAS, 204 F.3d 381, 383(2nd. Cir.2000); UNITED STATES VS. SWINEY, 203 F.3d 397, 404 n.5 (6th. Cir.), cert denied, U.S. \_\_\_\_\_, 120 Sct. 2678(2000)

Under Section 841(a) , the type and quantity of a drug are Sentencing Factors to be established before a judge by a preponderance of the evidence the judges assessment of those facts determine whether a defendant "Faces" A Maximum Sentence Of One Year , Three Years , Five Years , Twenty Years , Forty Years , (o)r Life in Prison . Section 841 is therefore Unconstitutional Under APPRENDI because it Remove[s] From the jury the assessment of the Facts that Increase the Prescribed range of penalties to which a Criminal Defendant By The Jury Is Convicted. SEE UNITED STATES VS. UNITED STATES Coin and Currency, 401 U.S. 715, 726-28(1971); Ex parte Yarbrough, 110 U.S. 651, 654 (1884):

" if the law which defines the offense and" prescribes the punishment is void, the Court is without jurisdiction and the Prisoner must be Discharged. id 110 U.S. 651, 654 (1884).

The petitioner Further Argues that District Court didnt Have Jurisdiction to Convict Him Based on Violation of an Invalid Statute, because an invalid Statute Is Void ab initio. See Journigan VS. Duffy, 552 F.2d 283, 289(9th

Cir. 1977); (quoting Ex parte Siebold, 100 U.S. 371, 376-77(1879).

" In any event, even under "plain error" standard" "[i]t is self-evident that basing a conviction on an unconstitutional statute is both 'plain' and 'error' ...."

APPRENDI VS. NEW JERSEY, 530 U.S. 466, 120 S.Ct. 2348(2000) Was "a Challenge to a . . . Statute." U.S. Supp. Br. at 5 (emphasis added).

The New Jersey statute at issue in Apprendi allowed a trial judge to increase the maximum prison sentence for an offense if he found by a preponderance of the evidence that the defendants actions constituted a "hate crime." The Supreme Court in Apprendi did not declare that the New Jersey Legislature , in enacting the Statute , really meant to say that a jury could find a defendant guilty of a more serious offense if it found beyond a reasonable doubt that his action constituted a "hate crime." The Supreme Court did not rewrite the statute in APPRENDI; " it Declared The Statute Un-Constitutional. Futhermore

" Courts cannot ignore the legislative will in order to " avoid constitutional adjudication; "although the [Supreme] Court will often strain to construe legislation so as to save it against constitutional attack, it must not and will not carry this to the point of perverting the purpose of the Statute, " . . . or judicially rewriting it.

Commodity Futures Trading Comm'n VS. Schor, 478 U.S. 833, 841 (1986) (citation ommitted); See Also United States VS. X-Citement Video Inc., 513 U.S. 64, 86 (1994) (Scalia, J., dissenting) ("Not every Construction , but only 'every reasonable construction must be resorted to , in order to save a statute from unconstitutionality.' ") (citation om).

To the extent courts are rewriting Section 841 to make it Constitutional , as well as The res judicata that is injected into Habeas Act of may, 27, 1697. which is Guaranteed by the constitution.

Makes Not Only The Evolved 2255 Statute Un-constitutional ' But Also The "Anti-Terroist And Effective Death Penalty Act" Which places Restrictions On Habeas Corpus Petitions Is Un-Constitutional . As THE COSTITUTION "STATES" "CLEARLY" The Only Two Exceptions . And Because the Evolved 2255 Statute.Nor the Anti-Terroist Statute States Neither One ' According To the Constitution Of the United States. THEY [ AEDPA ] [ Evolved 2255] Are UNCONSTITUTIONAL .

For the reasons set forth in this Motion , The petitioner Prays that this Hon. Court **Grant Motion To Appoint Co- Counsel** As The petitioner Has asked the Court For Wisdom Through Prayer And Reason . The petitioner Also Hopes that through Co-Counsel , The petitioner and The Respondent Might Be Able To Agree On that which is Agreeable.

" The constitutional Command that Habeas Corpus " Be Available Reflects the Ancient Latin Legal Maximums '

Lex Semper dbit remedium [Law always provides remedies] And Lex Semper intendit quod conventi rationi,[ Law Always intends [What is Agreeable to Reason ].

Petitioner Now brings to the Attention of all Partys Involved ' that , in petitioner respones to Goverments Motion, with Motion to Amend and Supplement . In petitioners Conclusion , exist A Misstatement , Which The petitioner **Will** Herein Clearify .....

On the (6) Sixth Line from the Top , and the third (3) Line from the Bottom ' Petitioner States " and Most Importantly' Im Guilty ---- when it Should Have Read As follows:

and Most Importantly' Im Not Guilty-----

CONCLUSION

WHERE FORE THE PETITIONER PRAYS THAT THIS COURT APPOINTS CO-COUNSEL FOR MANY OF THE REASONS THAT THE PETITIONER HAS MENTION, AND THOSE THAT THE PETITIONER MAY HAVE FORGOT TO MENTION . FOR EVEN THIS CONCLUSION THAT MAY SEEM VERY EASY TO MANY , IVE DONE SO ~~AM~~ MANY TIMES, THAT IVE FORGOTTEN THE FORM . AND DECIDED TO JUST SPEAK . TO ALL PARTYS THAT ARE INVOLVED I SUBMIT THIS MOTION.

RESPECTFULLY SUBMITTED THIS DAY

*Mr Allen Morsley* (Dec, 18, 2001)  
MR ALLEN MORSLEY 14718056 DEC 18, 2001

CERTIFICATE OF SERVICE

I THE PETITIONER ALLEN MORSLEY HEREBY CERTIFY THAT A TRUE COPY OF THIS MOTION FOR APPOINTMENT OF CO-COUNSEL HAS BEEN SENT TO THE MATHEW E. HAGGERTY , UNITED STATES ATTORNEY For the Middle District of pennsylvania by mail . Under the penalty of Perjury to I Affix my Name .

*Mr Allen Morsley*

MR ALLEN MORSLEY